

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

Date of Decision: 22.3.1996.

CRIMINAL APPEAL No 35 of 1985

with

CRIMINAL APPEALS No. 36 & 37 OF 1985.

For Approval and Signature:

Hon'ble MR.JUSTICE M.H.KADRI

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?

Mr.J.A.Shelat, APP, for the Appellant, in all the Appeals.

Mr.C.V.Prajapati, for Mr.S.V.Raju, Advocate for the Respondents in Appeal No.35/85.

Respondent served in Appeal No. 36 of 1985.

Mr.A.J.Patel, Advocate, for the Respondent in Appeal No.37 of 1985.

CORAM : MR.JUSTICE M.H.KADRI
(22.3.1996)

ORAL JUDGEMENT

1. The above three appeals are filed by the State of Gujarat, against the common judgment and order of acquittal dated 30.5.1984, passed by the learned Addl. Sessions Judge, Mehsana, in Criminal Revision Applications No. 81/83, 79/83 and 77/83. The respondents in these appeals were the petitioners in those revision applications and they were acquitted of the offences punishable under Ss.381, 411 read with s.114 of the I.P.Code. Brief facts leading to the present appeals are as under :

2. Original accused No. 1, 2 and 3 were serving as Sub Divisional Officer of Telephones, Junior Engineer and Store Lineman with the Telephones Department at Kalol. It is the prosecution case that these accused had stolen six bundles of copper wire from the store of the telephones office at Kalol. It is further the prosecution case that original accused nos. 4 and 5 who are businessmen from Ahmedabad, purchased the stolen bundles of copper wire, and accordingly committed offence punishable under S.411 of the I.P.Code. On these allegations, a complaint was filed before the learned Judicial Magistrate, First Class at Kalol, which was registered as Criminal Case No. 1016 of 1980. Since the sanction to prosecute accused no.1 was not obtained by the prosecution, he came to be discharged by the learned Judicial Magistrate First Class, Kalol, on 18.5.1982. Charge Exh. 11 was framed by the learned Magistrate against rest of the accused, i.e. original accused Nos. 2, 3, 4 and 5 on 28.9.1982.

3. After recording the evidence, the learned Magistrate was pleased by his judgment and order dated 18.8.1983 rendered in Criminal Case No. 1016/80 to convict original accused no. 2 and 3 for the offence punishable under S.381 read with s.114 I.P.Code. For the said offence, accused no.2 was sentenced to undergo R.I. for 3 months and to pay a fine of Rs.1,000/-, i.d. to undergo S.I. for two months, and accused no.3 was sentenced to undergo R.I. for one month and to pay a

fine of Rs.500/- i.d. to undergo S.I. for one month. Accused No. 4 and 5 were convicted for the offence punishable under S.411 of the I.P.Code, and each one of them was sentenced to undergo S.I. for one month and to pay a fine of Rs.500/- i.d. to undergo further S.I. for one month.

4. Being aggrieved by the said judgment and order of conviction and sentence, original accused no.2 filed Criminal Revision Application No. 77 of 1983, original accused no.3 filed Cri. Revision Application No. 79 of 1983 and original accused no. 4 and 5 filed Cri.Revision Application No. 81 of 1983, in the Sessions Court at Mehsana. All the aforesaid three Criminal Revision Applications were heard together by the learned Additional Sessions Judge, Mehsana, who by his common judgment and order dated 30.5.1984 acquitted all the accused of the charges levelled against them, by setting aside the order of conviction and sentence passed by the learned Magistrate. Challenging the said order of acquittal passed by the learned Addl. Sessions Judge, Mehsana, State of Gujarat has filed the above three appeals.

5. Heard Mr.J.A.Shelat, ld.APP and the advocates for the respective parties. The learned Addl. Sessions Judge has acquitted the accused-Respondents mainly on the ground that the prosecution has not proved that six bundles of copper wire were received by the office of the Telephones Department at Kalol. No register was produced by the prosecution to prove that six bundles of copper wire were received in the stores of the Department. The learned Addl. Sessions Judge was, therefore, of the opinion that the main ingredient of the offence under S.381 of the I.P.Code was not proved, as the loss to the Department was not established by the prosecution. The reasoning given by the learned Addl.Sessions Judge is quite cogent and convincing. It has been contended by the defence that original accused no.1 (since discharged) and accused no.2 belong to one group of Union and therefore, they were falsely involved in the present case. Even the witnesses who were examined by the prosecution have admitted in their cross-examination that there was Union rivalry between accused no.1 on one side and the other employees of the telephones department at Kalol on the other. The prosecution has examined witnesses belonging to the rival group of Union which was against accused no.1 and 2, and the learned Addl. Sessions Judge has rightly discarded their evidence they being inimical to accused no. 1 and 2, and there being all chances of their falsely deposing against accused no.

1 and 2. The learned Addl. Sessions Judge has also rightly observed that the names of accused no. 1, 2 and 3 were not disclosed in the original complaint. As stated earlier, the prosecution has not established beyond reasonable doubt that six bundles of copper wire were received at the stores of the telephones department at Kalol, and therefore, the loss of copper wire was not established by the Department. The prosecution was bound to prove that accused no. 2 and 3 being the employees/servants of the department, have committed theft of any property in possession of their employer. Possession of six bundles of copper wire in the office of the telephones department is not proved. No documentary or oral evidence is produced by the prosecution to establish beyond reasonable doubt that six bundles of copper wire were received in the stores and therefore, it cannot be said that accused nos. 2 and 3 have committed theft of the said copper wire. The learned Addl. Sessions Judge has also given cogent and convincing reasons for not believing the prosecution case about seizure of copper wire as the identity of the same was not established. The panchas have also turned hostile and therefore, seizure of the copper wire from the possession of the accused is not proved. The prosecution witnesses in their cross-examination have categorically admitted that there was union rivalry and they were on inimical terms with accused no. 2 and 3. If this was the position, there were all chances of accused no. 2 and 3 being falsely involved in this case.

6. With regard to the stolen articles alleged to have been purchased by accused no. 4 and 5, the prosecution has not produced any cogent evidence to connect them with the offence. Accused no. 4 and 5 were not known to the prosecution witnesses. No test identification parade was held. Accused no. 4 and 5 were identified as the persons who had purchased the stolen articles only at the time of recording of evidence of the witnesses. Identification of accused no. 4 and 5 for the first time in court cannot be relied upon as no test identification parade was held earlier in point of time. The learned Addl. Sessions Judge has thus rightly acquitted accused no. 4 and 5 of the offence under section 411 of the I.P.Code.

7. I do not find any infirmity in the judgment and order of the learned Addl. Sessions Judge in acquitting the accused. When two contrary views are possible, the one which is favourable to the accused should be accepted, more particularly in an acquittal appeal. In view of the above discussion, I do not find any merit or

substance in the appeals.

8. In the result, Criminal Appeals No. 35/85, 36/85
and 37/85 are dismissed.
